IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3052 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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IDRISHBHAI RAHIMBHAI MANSURI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3052 of 2001

MS JAYSHREE C BHATT for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 16/06/2001

ORAL JUDGEMENT

#. Heard Ms.J.C.Bhatt, learned advocate appearing on behalf of the petitioner and Mr.H.L.Jani, learned AGP for respondent Nos. 1 to 3 and Ms.P.J.Dawawala, learned additional standing counsel for Central Government for

respondent No.4.

#. In the present petition, detention order dated 8th January, 2001 has been challenged by the present petitioner which has been passed by the District Magister, Mehsana against the present petitioner. Learned advocate Ms.J.C.Bhatt has submitted that though various contentions have been raised by the petitioner challenging the order of detention but one contention is enough to vitiate the order of detention. She submitted that along with the grounds of detention, relevant documents which have been supplied to the present petitioner are not legible documents. She relied upon pages - 2, 6, 10, 13, 20, 22, 28, 30 and 41. Ms.Bhatt, learned advocate has relied upon two decisions rendered in case of MOHD. ZAKIR VS. DELHI ADMINISTRATION reported in AIR 1982 SC 696 and in case of VIKRAMSINGH PRAVINSING RANA vs. STATE OF GUJARAT reported in 1988 (2) GLH page 414. She submitted that non supply of legible documents to the petitioner amounts to non supply of documents and according to her, it adversely affected the legal right of the detenu of making an effective representation and which ultimately violated provisions of Article 22 [5] of the Constitution of India. Therefore, according to the submission made by her, the detention order is required to be set aside.

#. The State Government has not filed any reply and the respondent No.4 has filed reply which is taken on record. Learned AGP Mr.H.L.Jani appearing on behalf of the respondent - State has raised contention that no doubt let us presume that some documents are illegible which referred by the learned advocate of the petitioner but in such circumstances, it is the duty of the petitioner to demand legible documents from the detaining authority. He submitted that the present petitioner has not demanded legible documents from the detaining authority. Not only that but no grievance has been made by the present petitioner in his representation and therefore this contention is not available to the present petitioner because he has not demanded the legible documents from the detaining authority. Therefore, there is no question of violation of legal right of the present petitioner and no such right of the petitioner has been adversely affected for making effective representation.

#. Learned advocate Ms.P.J.Dawawala, learned advocate for the respondent No.4 has supported the detention order and she submitted that the detaining authority has considered all the materials which are on record and after application of mind, detention order has been

passed which is legal and valid and the same is not required to be interfered with by this Court.

#. I have considered the submissions of all the learned advocates. However, the fact remains that the pages referred to on 2, 6, 10, 13, 20, 22, 28, 30 and 41 but all the original documents referred to above are not legible. I have personally verified and perused each page and according to my opinion, each document is not properly legible one, was supplied to the petitioner. Furthermore, in each page, some portion are not legible and therefore the contention which has been raised by the petitioner that these are documents supplied to the petitioner are not legible is correct but one contention which has been raised by the learned advocate Mr.H.L.Jani, learned AGP that it is the duty of the petitioner to demand the legible copy from the detaining authority. However, Ms.J.C.Bhatt, learned advocate for the petitioner has contended that the contention advanced on behalf of the respondent - State cannot be accepted on the simple ground that it is in fact the duty of the detaining authority to supply legible copy to the petitioner while passing the detention order. The view taken by the division bench of this Court in case of VIKRAMSINGH PRAVINSINGH RANA VS. STATE OF GUJARAT reported in 1988 [2] GLH 414, the relevant observations in para-3 are as under :-

"3. The petitioners have contended that they have been supplied the copy of the judgment delivered by the Court of Sessions, Amreli in Sessions Case No.40 of 1985 but some of the pages of the said judgement are not legible at all and, therefore, that amounts to non communication of the grounds and that also adversely affected the right of the petitioners' making representation to the concerned authorities. In the affidavit-in-reply, the District Magistrate has stated that the copies are legible. We have ourselves looked into the copies of the judgement supplied to the detenu and we find that some of the pages are not legible at all. For example, pages 16 and 42 of the said judgment are not legible. When some of the pages of the judgment are not legible, that amounts to non communication of the grounds and, therefore, the orders of detention and the continued detention are both vitiated. It is difficult to accept the submission of Mr.G.D.Bhatt, the learned Additional Public Prosecutor that Section 6 of the PASA Act can be pressed into service and the

orders of detention can be sustained on other grounds. We find it difficult to agree with Mr.Bhatt that Section 6 of the PASA Act can be pressed into service in a case like the present one, Section 6 of the PASA Act comes into play only when the grounds are communicated but one or more of the grounds are found to be vague, non existence etc. When there is non communication of some of the grounds to be detenu, the question of invoking of the provisions of Section 6 of the PASA Act does not arise. When some of the grounds are not communicated there is violation of Article 22(5) of the Constitution of India and, therefore, the detention becomes unconstitutional. We are supported with the view which we are inclined to take by the decision of the Division Bench of this Court rendered in Special Civil Application No.186 of 1987 [Coram : D.H.Shukla and P.H.Chauhan, JJ.] on 5-8-1987. In that case also it was a question of non communication of the grounds and the submission made on behalf of the State based on Section 6 of the PASA Act was rejected. The division bench of this Court referred to a judgement of the division bench of the Bombay High Court in the case of Chandra Shekhar Ojha Vs. A.K.Karnik and others reported in 1982 Cri. L.J. 1642 where such a contention was raised on behalf of the state and rejected. The Division Bench of the Bombay High Court in that case relied upon the decision of the Supreme Court in the case of Kamla Kanhaiyalal Khushalani Vs State of Maharashtra reported in AIR 1981 Supreme Court 814 when the Supreme Court held that the documents and the material relied upon in the order of detention form an integral part of the grounds and must be supplied to the detenu pari passu the grounds of detention and if the documents and material are even supplied late, then the detenu is deprived of an opportunity of making an effective representation against the order of detention. The Bombay High Court observed that before the order of detention can be supported the constitutional safeguards must be strictly observed. In the case of Bhupinder Singh V. Union of India and Other [1987] 2, Supreme Court Cases 234 the detention was set aside on the ground that the right of making representation guaranteed under Article 22 of the Constitution of India was denied."

#. The division bench of this Court has held that some of the pages of the judgment supplied to the detenu which amounts to non communication of the grounds of detention and therefore, the order of detention has been set aside. Similarly, Apex Court has also observed in case of MAHOMAD ZAKIR reported in AIR 1982, Supreme Court page 696 that it is the constitutional mandate which requires the detaining authority to give documents relied upon or referred to in the order of detention pari passu the grounds of detention in order that the detenu may make an effective representation immediately instead of waiting for documents to be supplied with its manifest that question of demanding the documents is wholly irrelevant. Infirmity in this regard is violative of constitutional safeguards and enshrined under Article 22 [5] of the Constitution. After considering the observations of the Apex Court in case when the documents have been supplied by the detaining authority is ultimately found to be illegible and in such circumstances, demand has considered by the Apex Court as irrelevant then similar situation when the illegible documents supplied to the petitioner and the petitioner has not demanded the legible documents from the detaining authority, according to the my opinion, it also becomes irrelevant. Therefore, constitutional mandate caste a duty upon the detaining authority to supply the legible copy to the petitioner and therefore according to my opinion, on this ground non supplying legible copy of the documents which have been referred to and relied upon by the detaining authority, detention order is required to be quashed and set aside. Therefore, in above view of the matter so also considering the observations of the division bench as well as Apex Court, in the present case, the detention order dated 8th January, 2001 is required to be quashed and set aside.

#. In the result, the present petition is allowed and the impugned order of detention dated 8th January, 2001 is quashed and set aside. The detenu - IDRISHBHAI RAHIMBHAI MANSURI is ordered to be set at liberty, if not required in any other case. Rule is made absolute accordingly with no order as to costs.

Date : 16-6-2001 [H.K.Rathod, J.]

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